

**CERCLA SECTION 122(h)(1) AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS**

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF PAST RESPONSE COSTS
Polar Star Superfund Removal Site)	
Dutch Flat, Placer County, California)	U.S. EPA Region IX
)	CERCLA Docket No.2003-16
Desert Star Group, Inc.,)	PROCEEDING UNDER SECTION
)	122(h)(1) OF CERCLA
Settling Party.)	42 U.S.C. § 9622(h)(1)
)	

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Division Branch Chiefs by Regional Delegation R9 1290.20.

2. This Agreement is made and entered into by EPA, and Desert Star Group, Inc., a Nevada corporation ("DSGI" or "Settling Party"). The President, sole officer, and sole shareholder of DSGI, Tuli P. Haromy ("Tuli Haromy"), is personally guaranteeing that DSGI will comply with all terms of this Agreement. DSGI and Tuli Haromy consent to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Polar Star Superfund Removal Site ("Site") located in Dutch Flat, Placer County, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. DSGI was incorporated in Nevada in 1972 by Franz J. Haromy and Linda K. Haromy, who were the sole shareholders and officers of the corporation. In 1978 they transferred all their shares in DSGI to their son, Tuli P. Haromy, who also became the President of DSGI in 2001.

5. DSGI purchased real estate in Dutch Flat, California, including the Site, by real estate purchase contract dated July 24, 1979, and remains the owner of this real estate.

6. The Site and adjacent property owned by DSGI (the "Property") include areas where hydraulic mining occurred during the latter half of the nineteenth century. Hydraulic mining pit

operations on the surface, known as the Nicholls Diggings, were drained through tunnels, named the Polar Star Tunnel and the Southern Cross Tunnel. Mining operators built sluice boxes inside these tunnels and used a mercury amalgamation system to recover gold. The Polar Star Tunnel, which is approximately 590 feet long, and the longer Southern Cross Tunnel are both on the Property.

7. The United States Geological Survey ("USGS") conducted an investigation of mercury contamination throughout the historic gold mining region of the Sierra Nevada foothills in California. In 1999, USGS reported that mercury from the sediments and tunnel drainage waters from Polar Star Tunnel contributed to mercury contamination in the Bear River, which carries mercury to the Sacramento River and ultimately to San Francisco Bay.

8. This release of mercury, and the continued threat of further releases from the Site, constituted a "release" and a "threatened release" of "hazardous substances" under Section 104 of CERCLA, 42 U.S.C. § 9604.

9. In 2000, in response to this release and threatened release of hazardous substances at or from the Site, EPA undertook a removal action at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. EPA constructed a road to the upper end of the tunnel, excavated mercury-contaminated soils from the tunnel, and washed soil off of removed boulders. During August, 2000, EPA shipped off-site approximately 500 cubic yards of mercury-contaminated soil, 80 cubic yards of mercury-contaminated debris, and four drums of waste mercury. EPA cleaned the tunnel and built sedimentation traps to slow erosion.

10. In performing this removal action, EPA has incurred over \$1,600,000 in response costs at or in connection with the Site.

11. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

12. DSGI alleges that it was not aware of any mercury contamination before or after purchase of the Property in 1979 until notified by EPA in 1999. DSGI asserts that it purchased the Property, which is zoned "Forest Residential," for features and potential of its surface, because of its scenic nature, and for possible residential use, but not because it contained old mines or for the purpose of mining. DSGI alleges that it is not liable as claimed by EPA, asserts that it is an innocent landowner pursuant to Section 107(b) of CERCLA, and that it may have other defenses and counterclaims against EPA.

13. On September 3, 2002, EPA filed with the Placer County Recorder a Notice of Lien under Comprehensive Environmental Response, Compensation, & Liability, Act of 1980, as Amended, 42 U.S.C. § 9607(l), to secure the payment to the United States of all costs of the removal at the Site for which Settling Party is potentially liable under Section 107(a) of CERCLA.

14. EPA, Settling Party, and Tuli Haromy recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

15. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns, and upon Tuli Haromy. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets of real or personal property, shall in no way alter its responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

16. Pursuant to this Agreement, Tuli Haromy as President and sole shareholder of DSGI agrees to comply fully and to take all actions necessary to cause DSGI to comply fully with this Agreement.

IV. DEFINITIONS

17. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Federal Lien" shall mean the "Notice of Lien Under Comprehensive Environmental Response, Compensation, & Liability, Act of 1980, as Amended, 42 U.S.C. § 9607(1)" as to the Site recorded in the land records of Placer County, State of California on September 3, 2002, and attached hereto as Appendix A.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Party.

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through December 31, 2000, amounting to \$1,689,157.59 plus accrued interest on all such costs through such date.

j. "Property" shall mean all of Settling Party's real property in Dutch Flat, California, including the Site as well as other real property owned by Settling Party in Dutch Flat, California.

k. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*

l. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

m. "Settling Party" shall mean Desert Star Group Inc.

n. "Site" shall mean the Polar Star Superfund Removal Site, encompassing approximately 120 acres, located immediately north and adjacent to the town of Dutch Flat, in Placer County, California, as further described in the Federal Lien, Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. CERTIFICATION OF FINANCIAL INFORMATION

18. Settling Party and its officers have represented to EPA in submissions made under penalty of perjury that Settling Party is unable to pay the total Past Response Costs incurred by EPA in connection with the Site, for which it is potentially liable. Settling Party and its officers have provided EPA with Financial Information disclosing Settling Party's assets, on which statements and information EPA has relied in compromising its claim for Past Response Costs and agreeing to the settlement contained herein. The amount of Settling Party's payment under this Agreement is based upon EPA's evaluation of Settling Party's ability to pay EPA's Past Response Costs incurred with respect to the Site. EPA's consent to the terms of this Agreement is

expressly conditioned on the completeness, accuracy, and truth of Settling Party's Financial Information.

19. In the event that Settling Party has made statements regarding its financial and tax records which are false in any material respect, or has omitted any material information which may have a bearing on EPA's analysis of Settling Party's ability to pay Past Response Costs:

a. EPA's covenant not to sue set forth in Section VIII shall be nullified, and EPA shall be free to pursue its claim against Settling Party;

b. All payments already paid under this Agreement shall be retained by EPA and used to offset any amount due by the Settling Party (such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information); and

c. EPA may pursue all remedies available to it under law, including criminal prosecution for perjury or false swearing.

VI. CONTRIBUTION TO RESPONSE COSTS

20. Settling Party shall cause payment to be made to the EPA Hazardous Substance Superfund from proceeds of the sale of the Property to partially reimburse Past Response Costs expended by EPA at the Site.

21. Settling Party hereby assigns and pledges to EPA ninety-five percent (95%) of the Net Proceeds from the sale of the Property, as defined below.

22. The Parties agree that Settling Party may sell portions of the Property in separate transactions, following the procedures required in this Agreement for each sale.

23. Within thirty (30) days after the Effective Date of this Agreement, Settling Party shall enter into a real estate Listing Agreement listing the Property for sale with an established, reputable and licensed real estate brokerage that is experienced in transactions in Placer County, California.

24. The Listing Agreement shall provide that the Settling Party may terminate the Listing Agreement with seven (7) days notice if EPA provides Settling Party notice that EPA has determined, in its sole, unreviewable discretion, that the Listing Agent has failed to comply with any term of the Listing Agreement. Settling Party shall terminate the Listing Agreement within seven (7) days of receiving such notice from EPA. In the event that Settling Party's agreement with a listing agent is terminated prior to the sale of all of the Property and prior to the twelve-month period specified in Paragraph 30, Settling Party shall, within thirty (30) days from the date of termination, enter into an agreement with a different agent, that also meets the qualifications set forth in the preceding Paragraph.

25. Settling Party agrees to use its best efforts to accomplish the sale of the Property, taking all actions reasonably necessary to facilitate and expedite the sale of the Property in a commercially reasonable manner including, but not limited to, advertising the Property for sale on at least a monthly basis in a real estate publication or a newspaper of general circulation covering the region where the Property is located. Settling Party agrees to take no action which would impair the value of the Property.

26. Until such time as the sale of the Property or any portion thereof is concluded or a public auction of the property is conducted, Settling Party shall pay all taxes and assessments attributable to the Property before they become delinquent.

27. Settling Party agrees to require the Listing Agent, through the Listing Agreement, to notify EPA in writing within forty-eight (48) hours of receipt of any written offer to purchase the Property or a portion thereof and, at that time, to provide EPA with a copy of the offer. If EPA, in its sole, unreviewable discretion, approves of the offer in writing, then Settling Party shall accept the offer and enter into a purchase agreement. If a written offer includes a sales price for any portion of the Property at least 95% of the value indicated in the Appraisal (Appendix B), and the offer does not include any terms which are inconsistent with the terms or purpose of this Agreement, CERCLA, or other applicable federal or state law or which are otherwise unreasonable, EPA approval of the purchase agreement may be presumed and Settling Party may accept the offer and enter into a purchase agreement. Otherwise, Settling Party shall not execute a purchase agreement for the sale of any of the Property without prior written approval of the offer by EPA.

28. Within thirty (30) days after execution of an approved purchase agreement, the Settling Party shall cause to be prepared and submitted to EPA for approval appropriate escrow instructions as described below:

a. The escrow instructions shall provide for the proration of all closing costs and fees between purchaser and seller in a manner consistent with the custom in Placer County, California for such transactions.

b. The escrow instructions shall provide that all normal expenses allocable to a seller at a closing of an escrow shall be deducted from the gross proceeds of the sale deemed otherwise receivable by the escrow agent. "Normal expenses" include commercially reasonable realtors' fees and any commercially reasonable costs of a public auction as well as survey costs, if required by a title company.

c. The proceeds remaining after deduction of the seller's portion of the closing costs referenced in Paragraph 28(a) and the deduction of all normal expenses referenced in Paragraph 28(b) shall constitute the "Net Proceeds" of the sale, unless these deductions exceed 15% of the gross proceeds, in which case the "Net Proceeds" shall equal 85% of the gross proceeds.

d. The escrow instructions shall provide that the escrow agent will allocate and distribute the Net Proceeds within seven (7) days after the closing date of the sale: 95% to EPA and 5% to Settling Party.

e. The escrow instructions shall provide that EPA's share of the Net Proceeds of the sale shall be made by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the escrow agent by EPA Region IX, and shall be accompanied by a statement referencing Polar Star Superfund Removal Site, EPA Region IX, Site I.D. No. 09 GB and the EPA docket number for this action. The escrow instructions shall also provide that, at the time of payment, the escrow agent shall send notice that such payment has been made to:

Joshua Wirtschafter
Office of Regional Counsel, ORC-3
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

Such notice shall reference the Polar Star Superfund Removal Site, EPA Region IX, Site I.D. No. 09 GB and the EPA docket number for this action.

f. The total amount to be paid to EPA pursuant to this Agreement shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for Past Response Costs incurred and paid at or in connection with the Site by the EPA Hazardous Substance Superfund.

29. After the proposed escrow instructions are approved by EPA and agreed to by the Settling Party and a purchaser, Settling Party shall open an escrow with an escrow agent approved by EPA, and Settling Party shall execute the sale according to the approved terms.

30. If the entire Property has not been sold twelve (12) months after the Effective Date of this Agreement, Settling Party shall immediately make all necessary arrangements to have all unsold portions of the Property sold by public auction, which shall be conducted within fourteen (14) months of the Effective Date of this Agreement by a disinterested party with no connection with Settling Party and who is licensed in the State of California to conduct such a public auction. There is no minimum bid required for each parcel of property sold by public auction. The Settling Party shall ensure that the proceeds from such an auction are handled according to escrow instructions consistent with Paragraph 28 and approved by EPA.

31. The Settling Party shall instruct and authorize the escrow agent, at the close of escrow, to record in the Recorder's Office, Placer County, State of California, a release of the notice of Federal Lien. This release, which shall be prepared by EPA, shall release the notice of Federal Lien filed on September 3, 2002, and shall not release any other lien or encumbrance which may exist on the Property. In the event the Property is sold in separate parcels, the Settling Party shall instruct and authorize the escrow agent to record a release of the Federal Lien in the Recorder's Office only for that portion of the Property that has been sold.

32. EPA shall provide the selected real estate listing agent with a letter describing what reasonable steps a purchaser must take to maintain its status as a "bona fide prospective purchaser" under CERCLA § 101(40). Any such letter will be consistent with policy and guidance issued by EPA, including the "Policy on the Issuance of Comfort/Status Letters," ("1997 Comfort/Status Letter Policy"), 62 Fed. Reg. 4,624 (1997), and the "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements"), (March, 2003) or any applicable final or revised versions of these or other applicable EPA policies and guidances. Any such letter will include limitations and caveats recommended by the applicable policies and guidances.

VII. FAILURE TO COMPLY WITH AGREEMENT

33. Stipulated Penalty.

a. If Settling Party does not comply with any obligations under this Agreement, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, \$250 per violation per day of such noncompliance. Stipulated penalties shall be limited to a total of \$185,000.

b. Stipulated penalties, if any accrue, are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, EPA Region IX and Site I.D. No. 09 GB, and the EPA Docket Number for this action. Settling Party shall send the check and any accompanying letter to:

U.S. EPA, Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Attn: Tiffanie Pang

c. At the time of each payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify EPA Region IX, Site I.D. No. 09 GB, and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. In the event that noncompliance occurs due to the action or non-action of a third

party, no stipulated penalty shall accrue until fifteen (15) days after EPA notifies Settling Party of the noncompliance. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

34. In addition to Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with the requirements of this Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

35. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the penalties that have accrued pursuant to this Agreement. Payment of penalties shall not excuse Settling Party from payment as required by Section VI or from performance of any other requirements of this Agreement.

36. Tuli Haromy agrees to execute the terms of this agreement. In the event of the failure of Settling Party to make any payments required under this Agreement, Tuli Haromy shall be responsible for such payments up to, but not exceeding, the maximum Stipulated Penalty of \$185,000.

VIII. COVENANT NOT TO SUE BY EPA

37. Except as specifically provided in Section IX (Reservations of Rights by EPA), and conditioned upon Tuli Haromy's adherence with the requirements of this Agreement, EPA covenants not to sue or take administrative action against Settling Party or Tuli Haromy pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amounts due under Section VII (Failure to Comply with Agreement). This Covenant Not to Sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This Covenant Not to Sue extends only to Settling Party and to Tuli Haromy in his capacity as guarantor of this Agreement, and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

38. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 37. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Setting Party with respect to:

- a. liability for failure of Settling Party or Tuli Haromy to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

39. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

40. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

41. Notwithstanding any other provision in this Agreement, in the event that EPA sues Settling Party for any claim regarding matters addressed by this Agreement, other than enforcement of this Agreement, Settling Party shall be free to assert any defense or counterclaim that would have been available had it not entered into this Agreement.

42. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

43. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

44. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

45. The Parties agree that Settling Party is entitled, as of the Effective Date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

46. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

47. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VIII.

XII. SITE ACCESS

48. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by Settling Party, Settling Party shall, commencing on the Effective Date of this Agreement, provide EPA, the United States Department of Interior, the State of California, and their representatives, including contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity

related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents; and
- g. Assessing Settling Party's compliance with this Agreement.

49. Notwithstanding any provision of this Agreement, EPA, other agencies of the United States, and the State of California, retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. RETENTION OF RECORDS

50. Except as provided in Paragraph 52, Settling Party shall, during the Record Retention Period defined in Paragraph 51, preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate or individual retention policy to the contrary.

51. The Record Retention Period shall be the earlier of either:

- a. ten (10) years after the Effective Date of this Agreement; or
- b. Ninety (90) days after Settling Party notifies EPA that it intends to dissolve as a corporation without being acquired by or merged into another entity and that it no longer owns any parcel of real property in Placer County, California.

52. After the conclusion of the Record Retention Period defined in the preceding Paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other

privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

53. Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

54. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party. Written notices to EPA shall be sent to:

Joshua Wirtschafter
Office of Regional Counsel, ORC-3
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

Written notices to Settling Party shall be sent to the Resident Agent of DSGI:

David Crosby, Esq.
711 South 8th Street
Las Vegas, NV 89101

and also sent to legal counsel for DSGI:

Frank Jablonski, Esq.
Porter, Jablonski & Associates, S.C.
354 West Main Street
Madison, WI 53703

XV. INTEGRATION/APPENDICES

55. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement: "Appendix A" is the Federal Lien. Appendix B is the Appraisal, including Appendix B1, the Self-Contained Appraisal Report, Polar Star and Southern Cross Mine Claim Areas, by Robert Nord, dated July 8, 2003, and Appendix B2, the letter from Robert Nord regarding Review of Desert Star Group Inc. Additional Parcels Located Adjacent to the Polar Star and Southern Cross Mine Claim Areas, Placer County, CA, dated July 28, 2003.

XVI. PUBLIC COMMENT

56. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

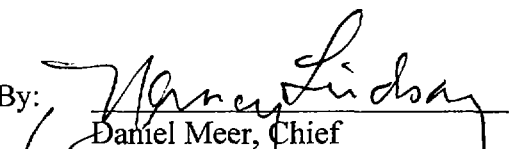
57. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVIII. EFFECTIVE DATE

58. The Effective Date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 56 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

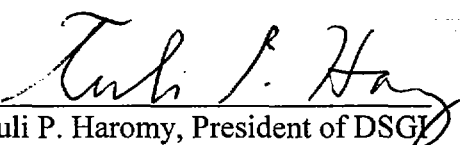
IT IS SO AGREED:

U.S. Environmental Protection Agency

By:  10-10-03
Daniel Meer, Chief [Date]
Emergency Response, Planning, and Assessment Branch
Superfund Division, Region IX

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No. 2003-16, relating to the Polar Star Mine Superfund Removal Site:

FOR SETTLING PARTY: Desert Star Group, Inc.
2380 E. Rochelle Avenue
Las Vegas, NV 89119

By:  Dated: July 24, 2003
Tuli P. Haromy, President of DSGI

FOR TULI P. HAROMY IN HIS PERSONAL CAPACITY:

By:  Dated: July 24, 2003
Tuli P. Haromy, President of DSGI
Kuwait City, Kuwait